

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12440 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ALPESHKUMAR SOMABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12440 of 2004
MR JK PARMAR for Petitioner No. 1
MR HM PRACHHHAK, AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
M IA SHAIKH for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 16/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. JK Parmar for the

petitioner detenu and ld. AGP Mr. HM Prachhak for the State of Gujarat. Say of ld. Addl. Central Govt. Standing Counsel Mr. Shaikh for the Union of India is also considered. Reply affidavits filed on behalf of the detaining authority as well as State of Gujarat, tendered today by ld. AGP Mr. Prachhak are taken on record. Affidavit-in-reply filed on behalf of Union of India and tendered today by ld. Addl. Central Government Standing Counsel Mr. Shaikh is also taken on record

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention No. SB/TAPASANI/ PD/ ATK/ SR.No.4/2004 dated 13.08.2004 passed by the District Magistrate, Ahmedabad in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act") against the petitioner-detenu.

3. The say of the detenu is that the order of detention under challenge is illegal, invalid, arbitrary and suffers from the infirmities that are stated in para-4 of the memo of the petition. While recording subjective satisfaction, the detaining authority has considered number of documents and report submitted to her whereby it was found that the petitioner detenu was involved in the activities of black-marketing of petroleum product- solvent which is a essential commodity. When premises of the detenu was inspected and raided on 05.05.2004, total petroleum solvent quantity of 3227 ltrs. was found and this stock was held by the detenu unauthorisedly and in contravention of the Statute and guidelines of the government. Considering the quantity of the material seized and value of it, the detaining authority recorded subjective satisfaction and passed the order of detention.

4. The order of detention is assailed on various grounds. However, ld. counsel Mr. Parmar has concentrated his arguments mainly on one ground i.e. that there is a delay in passing the order of preventive detention which affects adversely to the validity of the order and such order of detention can not sustain in the eyes of law in view of settled legal position. A specific ground as to delay is raised in para-4(k) of the petition which is reproduced herein below:-

"The petitioner respectfully states that there is
a gross delay in passing the order of detention.
The petitioner submits that the purpose of

detention is preventive and not punitive. In the present case, the inspection conducted on 05.05.2004. The statement of the petitioner recorded on the same day, that is, on 05.05.2004 and he is said to have confessed the illegal act. Thus, there was ample and sufficient materials were collected by the inspecting officer on 05.05.2004. However, the order of detention came to be passed on 13.08.2004 i.e. after more than three months. The petitioner states that filing of criminal complaint is not the grounds for passing the order of detention after such a long time period. Therefore, the order of detention is required to be quashed and set aside."

5. The detaining authority has explained the delay caused in passing the order of detention by filing reply affidavit. In para-11 of the reply affidavit, an account of time spent has been given, but on careful reading of the details, the Court finds that the explanation is neither satisfactory nor convincing in view of the fact that a formal criminal complaint was lodged and the petitioner detenu was arrested immediately. In that view of the matter, the impugned order of detention could have been passed promptly.

6. Mr. Parmar, ld. counsel appearing for the detenu, in support of this submission, has rightly placed reliance on the decision of this Court dated 26.08.2003 tendered in Spl.C.A. No.10182/2003. He has also taken this Court through relevant paras 6 & 7 of the said decision. In the facts circumstances of the case, the ratio of the aforesaid decision would squarely apply to the facts of the present case and so on the sole ground of delay in passing the order of detention, the impugned order of detention requires to be quashed and set aside and accordingly on this sole ground, impugned order of detention is quashed and set aside.

7. Before parting, it is relevant to note that this petition can also be allowed on the ground that one Anjoo Tomar, who was co-accused of the criminal case registered against the present petitioner detenu and against whom on the same set of facts order of detention came to be passed by the District Magistrate, Kheda at Nadiad on 21.11.2003, his order of detention came to be quashed and set aside by this Court while dealing with and disposing of a writ petition filed by him challenging the order of detention being Spl.C.A. No. 8060/2004 vide Oral Judgment dated 23.09.2004 (Coram: R.P.Dholakia, J). Ld. Counsel Mr. Parmar has produced copy of the said

decision for perusal. Of course, the Court allowed the said petition totally on different ground, but this aspect can be considered as relevant while dealing with the present petition which this Court is supposed to consider.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 13.08.2004 passed by the District Magistrate, Ahmedabad is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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